

LEGISLATIVE HISTORY CHECKLIST
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(Health care facilities--
security deposits)

NJSA: 26:2H-14.5 to 26:2H-14.7

LAWS OF: 1993 **CHAPTER:** 282

BILL NO: A2115

SPONSOR(S) Felice

DATE INTRODUCED: December 17, 1992

COMMITTEE: **ASSEMBLY:** Health and Human Services

SENATE: Health and Human Services

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** February 1, 1993

SENATE: December 2, 1993

DATE OF APPROVAL December 15, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

2115
1/10

[FIRST REPRINT]
ASSEMBLY, No. 2115

STATE OF NEW JERSEY

INTRODUCED DECEMBER 17, 1992

By Assemblyman FELICE

1 AN ACT concerning interest on security deposits held by
2 residential health care facilities and supplementing P.L.1971,
3 c.136 (C.26:2H-1 et seq.).
4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. If a residential health care facility requires a security
8 deposit advanced prior to the admission of a person to the
9 residential health care facility, the money or other form of
10 security, until repaid or applied to payments in accordance with
11 the terms of the contract or agreement, including the resident's
12 portion of the interest or earnings accumulated thereon as
13 hereinafter provided, shall continue to be the property of the
14 resident and shall be held in trust by the residential health care
15 facility and shall not be mingled with the personal property or
16 become an asset of the residential health care facility¹, except
17 as provided in section 2 of this act¹.

18 a. The residential health care facility shall: (1) invest that
19 money in shares of an insured money market fund established by
20 an investment company based in this State and registered under
21 the "Investment Company Act of 1940," 54 Stat. 789 (15 U.S.C. §
22 80a-1 et seq.) whose shares are registered under the "Securities
23 Act of 1933," 48 Stat. 74 (15 U.S.C. § 77a et seq.) and the only
24 investments of which fund are instruments maturing in one year
25 or less, or (2) deposit that money in a State or federally chartered
26 bank, savings bank or savings and loan association in this State
27 insured by an agency of the federal government in an account
28 bearing a variable rate of interest, which shall be established at
29 least quarterly, which is similar to the average rate of interest on
30 active interest bearing money market transaction accounts paid
31 by the bank or association, or equal to similar accounts of an
32 investment company described in paragraph (1) of this subsection,
33 less an amount not to exceed 1% per annum of the amount so
34 invested or deposited for the costs of servicing and processing the
35 accounts.

36 b. Immediately after the security money is invested, the
37 residential health care facility shall notify the resident in writing
38 of the name and address of the investment company, State or
39 federally chartered bank, savings bank or savings and loan
40 association in which the deposit or investment of security money
41 is made, and the amount of the deposit.

42 c. All of the money so deposited or advanced may be deposited

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHH committee amendments adopted January 11, 1993.

1 or invested by the residential health care facility in one
2 interest-bearing or dividend yielding account as long as the
3 residential health care facility complies with all the other
4 requirements of this act.

5 d. The residential health care facility is entitled to receive as
6 administration expenses, a sum equivalent to 1% per annum
7 thereon or 12.5% of the aggregate interest yield on the security
8 deposit, whichever is greater, less the amount of any service fee
9 charged by an investment company, a State or federally
10 chartered bank, savings bank or savings and loan association for
11 money deposited pursuant to this section, which is in lieu of all
12 other administrative and custodial expenses. The balance of the
13 interest or earnings paid thereon by the investment company,
14 State or federally chartered bank, savings bank or savings and
15 loan association shall belong to the resident and shall be
16 permitted to compound to the benefit of the resident, or be paid
17 to the resident in cash, or be credited toward the payments due
18 on the anniversary of the resident's admission to the residential
19 health care facility in accordance with the terms of the contract
20 or agreement.

21 e. If the residential health care facility fails to notify the
22 resident of the name and address of the investment company,
23 State or federally chartered bank, savings bank or savings and
24 loan association in which the deposit or investment of the
25 security is made, and the amount thereof, within 30 days after
26 receipt of the money from the resident, the resident may give
27 written notice to the residential health care facility that the
28 security money shall be applied on account of payments due or to
29 become due from the resident, and thereafter the resident shall
30 be without obligation to make any further security deposit and
31 the residential health care facility shall not be entitled to make
32 further demand for a security deposit.

33 f. Within 60 days after the person is no longer a resident of the
34 residential health care facility, the residential health care
35 facility shall return to the former resident or, if appropriate, to
36 the resident's estate, by personal delivery or by registered or
37 certified mail the sum so deposited plus the former resident's
38 portion of the interest or earnings accumulated thereon, less any
39 charges expended in accordance with the terms of a contract or
40 agreement. The interest or earnings and any such deductions
41 shall be itemized and the resident or, if appropriate, the
42 resident's estate, notified thereof by personal delivery or by
43 registered or certified mail.

44 g. The Commissioner of Banking may promulgate rules and
45 regulations with respect to the establishment of the method of
46 computing the interest due to either the residential health care
47 facility or to the resident pursuant to the provisions of this act in
48 accordance with the "Administrative Procedure Act," P.L.1968,
49 c.410 (C.52:14B-1 et seq.) if the money is deposited in an account
50 or in shares of an investment company upon which the interest
51 varies on a periodic basis.

52 12. A residential health care facility shall not be required to
53 segregate a security deposit held on behalf of a resident on the
54 effective date of this act from other funds used to operate the

1 facility if the facility complies with the requirements set forth in
2 subsections a. through c. of this section.

3 a. The residential health care facility shall pay the resident
4 interest on the security deposit equal to the average rate of
5 interest paid by State or federally chartered banks, savings banks
6 or savings and loan associations located in the municipality in
7 which the residential health care facility is located and insured
8 by an agency of the federal government, in an account bearing a
9 variable rate of interest which shall be established at least
10 quarterly, which is similar to the average rate of interest on
11 active interest bearing money market transaction accounts paid
12 by a bank or association, less an amount not to exceed 1% per
13 annum of the security deposit for the cost of servicing the
14 security deposit account. The residential health care facility
15 shall obtain the interest rate to be paid on the security deposit at
16 least quarterly by contacting at least three banks or associations
17 in the municipality in which the facility is located, and shall
18 document each call with the name of the bank or association
19 called, the person contacted at the bank or association, the rate
20 of interest quoted and the type of account to which the interest
21 rate applies.

22 b. The residential health care facility shall notify the resident
23 in writing that the facility will be holding the security deposit,
24 the amount of the security deposit and the initial interest rate to
25 be paid on the deposit. If the residential health care facility fails
26 to so notify the resident in writing within 30 days after the
27 effective date of this act, the resident may give written notice to
28 the residential health care facility that the security money shall
29 be applied on account of payments due or to become due from the
30 resident, and thereafter the resident shall be without obligation
31 to make any further security deposit and the residential health
32 care facility shall not be entitled to make further demand for a
33 security deposit.

34 c. The residential health care facility is entitled to receive as
35 administration expenses, a sum equivalent to 1% per annum
36 thereon or 12.5% of the aggregate interest yield on the security
37 deposit, whichever is greater, which is in lieu of all other
38 administrative and custodial expenses associated with the
39 resident's security deposit account. The balance of the interest
40 or earnings paid to the account shall belong to the resident and
41 shall be permitted to compound to the benefit of the resident, or
42 be paid to the resident in cash, or be credited toward the
43 payments due on the anniversary of the resident's admission to
44 the residential health care facility in accordance with the terms
45 of the contract or agreement. The residential health care
46 facility shall provide the resident with a quarterly statement of
47 his security deposit account showing the security deposit balance,
48 the interest rate paid on the security deposit, the amount of
49 interest earned and any deductions made from the account.¹

50 ¹[2.] 3.¹ A person shall have a cause of action against the
51 residential health care facility for any violation of this act. The
52 Department of Health may maintain an action in the name of the
53 State to enforce the provisions of this act and any rules and
54 regulations promulgated pursuant to this act. The action to

1 recover actual and punitive damages shall be brought in a court
2 of competent jurisdiction. A plaintiff who prevails in an action
3 shall be entitled to recover reasonable attorney's fees and costs
4 of the action.

5 ¹[3.] 4.1 This act shall take effect on the first day of the sixth
6 month following enactment and apply to all money or other forms
7 of security held by a residential health care facility on behalf of
8 a resident on the effective date of this act.

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13 _____
14 Requires residential health care facilities to pay interest on
security deposits of residents.

1 entitled to recover reasonable attorney's fees and costs of the
2 action.

3 3. This act shall take effect on the first day of the sixth month
4 following enactment and apply to all money or other forms of
5 security held by a residential health care facility on behalf of a
6 resident on the effective date of this act.

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STATEMENT

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11 This bill requires residential health care facilities to pay
12 interest on all security deposits advanced by persons seeking
13 admission as residents to those facilities. Each security deposit,
14 including the resident's portion of the interest or earnings
15 accumulated on that deposit, shall remain the property of the
16 resident of the residential health care facility until repaid to the
17 resident or applied to payments to the facility in accordance with
18 a contract or agreement between the resident and the facility.

19 Specifically, the bill stipulates that a residential health care
20 facility shall: (1) invest a security deposit in shares of an insured
21 money market fund or deposit the money in a variable interest
22 rate account in a State or federally chartered financial
23 institution that has a similar average interest rate; (2) notify
24 each resident in writing of the name and address of the
25 investment company or financial institution in which the money is
26 invested or deposited, as the case may be, and the amount
27 thereof; and (3) within 60 days after the person is no longer a
28 resident of the residential health care facility, return to the
29 former resident or the resident's estate, as appropriate, the
30 amount of the security deposit plus the former resident's portion
31 of the interest or earnings from the security deposit less any
32 charges expended in accordance with the terms of a contract or
33 agreement.

34 The bill provides that a residential health care facility is
35 entitled to receive as administration expenses a sum equivalent
36 to 1% of the security deposit per annum or 12.5% of the
37 aggregate interest yield on the security deposit, whichever is
38 greater, less the amount of any service fee charged by the
39 investment company or the financial institution. The balance of
40 the interest or earnings belongs to the resident and shall be
41 permitted to compound to the resident's benefit, be paid to the
42 resident in cash, or be credited toward the payments due on the
43 anniversary of the resident's admission to the facility under the
44 terms of a contract or agreement.

45 The bill provides that if a residential health care facility fails
46 to notify a resident of the name and address of the investment
47 company or financial institution in which the resident's security
48 deposit is invested or deposited and the amount thereof within 30
49 days after receipt of that money from the resident, the resident
50 may notify the facility in writing that the security deposit shall
51 be applied to any payments due or to become due by the
52 resident. The resident shall then be free of any obligation to
53 make an additional security deposit to the residential health care
54 facility. In addition, a person shall have a cause of action against

1 a facility for any violation of the provisions of the bill.

2 The bill will take effect on the first day of the sixth month
3 following enactment. The effective date also provides that the
4 bill applies to all security deposits held by the facilities on behalf
5 of the residents at the time the law becomes effective. This
6 clarifies the fact that this bill would not merely apply to security
7 deposits received from residents who enter the facility after the
8 effective date of the law.

9 This bill is modeled on P.L.1991, c.262 (C.30:13-4.1 et seq.)
10 which requires nursing homes to pay interest on security
11 deposits. This bill provides this same protection to residents of
12 residential health care facilities.

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17 _____
18 Requires residential health care facilities to pay interest on
security deposits of residents.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2115

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 11, 1993

The Assembly Health and Human Services Committee favorably reports Assembly Bill No. 2115 with committee amendments.

As amended by the committee, this bill requires a residential health care facility (RHCF) to pay interest on all security deposits advanced by persons seeking admission as residents to that facility. Each security deposit, including the resident's portion of the interest or earnings accumulated on that deposit, shall remain the property of the RHCF resident until repaid to the resident or applied to payments to the RHCF in accordance with a contract or agreement between the resident and the RHCF.

Specifically, the amended bill stipulates that a RHCF shall: (1) invest a security deposit in shares of an insured money market fund or deposit the money in a variable interest rate account in a State or federally chartered financial institution that has a similar average interest rate; (2) notify each resident in writing of the name and address of the investment company or financial institution in which the money is invested or deposited, as the case may be, and the amount thereof; and (3) within 60 days after the person is no longer a resident of the RHCF, return to the former resident or the resident's estate, as appropriate, the amount of the security deposit plus the former resident's portion of the interest or earnings from the security deposit less any charges expended in accordance with the terms of a contract or agreement.

The bill provides that a RHCF is entitled to receive as administration expenses a sum equivalent to 1% of the security deposit per annum or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, less the amount of any service fee charged by the investment company or the financial institution. The balance of the interest or earnings belongs to the resident and shall be permitted to compound to the resident's benefit, be paid to the resident in cash, or be credited toward the payments due on the anniversary of the resident's admission to the RHCF under the terms of a contract or agreement.

The bill provides that if a RHCF fails to notify a resident of the name and address of the investment company or financial institution in which the resident's security deposit is invested or deposited and the amount thereof within 30 days after receipt of that money from the resident, the resident may notify the RHCF in writing that the security deposit shall be applied to any payments due or to become due by the resident. The resident shall then be free of any obligation to make an additional security deposit to the RHCF. In addition, a person shall have a cause of action against a RHCF for any violation of the provisions of the bill.

The bill will take effect on the first day of the sixth month following its enactment. The effective date also provides that the bill applies to all security deposits held by a RHCF on behalf of its residents at the time the law becomes effective. This clarifies the fact that this bill would not merely apply to security deposits received from residents who enter the RHCF after the effective date of the law.

The committee amended the bill to provide that a RHCF is not required to segregate a security deposit held on behalf of a resident on the effective date of the bill from other funds used to operate the RHCF if the RHCF complies with the following requirements:

- The RHCF shall pay the resident interest on the security deposit equal to the average rate of interest paid by State or federally chartered banks, savings banks or savings and loan associations located in the municipality in which the residential health care facility is located and insured by an agency of the federal government, in an account bearing a variable rate of interest which shall be established at least quarterly, which is similar to the average rate of interest on active interest bearing money market transaction accounts paid by a bank or association, less an amount not to exceed 1% per annum of the security deposit for the cost of servicing the security deposit account. The RHCF shall obtain the interest rate to be paid on the security deposit at least quarterly by contacting at least three banks or associations in the municipality in which the facility is located, and shall document each call with the name of the bank or association called, the person contacted at the bank or association, the rate of interest quoted and the type of account to which the interest rate applies.

- The RHCF shall notify the resident in writing that the RHCF will be holding the security deposit, the amount of the security deposit and the initial interest rate to be paid on the deposit. If the RHCF fails to so notify the resident in writing within 30 days after the effective date of the bill, the resident may give written notice to the RHCF that the security money shall be applied on account of payments due or to become due from the resident, and thereafter the resident shall be without obligation to make any further security deposit and the RHCF shall not be entitled to make further demand for a security deposit.

- The RHCF is entitled to receive as administration expenses, a sum equivalent to 1% per annum thereon or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, which is in lieu of all other administrative and custodial expenses associated with the resident's security deposit account. The balance of the interest or earnings paid to the account shall belong to the resident and shall be permitted to compound to the benefit of the resident, or be paid to the resident in cash, or be credited toward the payments due on the anniversary of the resident's admission to the RHCF in accordance with the terms of the contract or agreement. The RHCF shall provide the resident with a quarterly statement of his security deposit account showing the security deposit balance, the interest rate paid on the security deposit, the amount of interest earned and any deductions made from the account.

These amendments are intended to address the cash flow problem which RHCFs might encounter if they were required to segregate security deposit monies held for current residents from other funds used to operate the facility, while still providing these residents with the same benefits as those provided to persons who become RHCF residents after the effective date of this bill.

This bill is modeled on P.L.1991, c.262 (C.30:13-4.1 et seq.), which requires nursing homes to pay interest on security deposits. The bill is intended to provide the same protection to RHCF residents.

SENATE HEALTH AND HUMAN SERVICE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 2115

STATE OF NEW JERSEY

DATED: MARCH 11, 1993

The Senate Health and Human Services Committee favorably reports Assembly Bill No. 2115 (1R).

This bill requires a residential health care facility (RHCF) to pay interest on all security deposits advanced by persons seeking admission as residents to that facility. Each security deposit, including the resident's portion of the interest or earnings accumulated on that deposit, shall remain the property of the RHCF resident until repaid to the resident or applied to payments to the RHCF in accordance with a contract or agreement between the resident and the RHCF.

Specifically, the bill stipulates that a RHCF shall: (1) invest a security deposit in shares of an insured money market fund or deposit the money in a variable interest rate account in a State or federally chartered financial institution that has a similar average interest rate; (2) notify each resident in writing of the name and address of the investment company or financial institution in which the money is invested or deposited, as the case may be, and the amount thereof; and (3) within 60 days after the person is no longer a resident of the RHCF, return to the former resident or the resident's estate, as appropriate, the amount of the security deposit plus the former resident's portion of the interest or earnings from the security deposit less any charges expended in accordance with the terms of a contract or agreement.

The bill provides that a RHCF is entitled to receive as administration expenses a sum equivalent to 1% of the security deposit per annum or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, less the amount of any service fee charged by the investment company or the financial institution. The balance of the interest or earnings belongs to the resident and shall be permitted to compound to the resident's benefit, be paid to the resident in cash, or be credited toward the payments due on the anniversary of the resident's admission to the RHCF under the terms of a contract or agreement.

The bill provides that if a RHCF fails to notify a resident of the name and address of the investment company or financial institution in which the resident's security deposit is invested or deposited and the amount thereof within 30 days after receipt of that money from the resident, the resident may notify the RHCF in writing that the security deposit shall be applied to any payments due or to become due by the resident. The resident shall then be free of any obligation to make an additional security deposit to the RHCF. In addition, a person shall have a cause of action against a RHCF for any violation of the provisions of the bill.

In order to address the cash flow problem which RHCFs might encounter if they were required to segregate security deposit

monies held for current residents from other funds used to operate the facility, while still providing these residents with the same benefits as those provided to persons who become RHCF residents after the effective date of this bill, the bill provides that a RHCF is not required to segregate a security deposit held on behalf of a resident on the effective date of the bill from other funds used to operate the RHCF if the RHCF complies with the following requirements:

- The RHCF shall pay the resident interest on the security deposit equal to the average rate of interest paid by State or federally chartered banks, savings banks or savings and loan associations located in the municipality in which the residential health care facility is located;
- The RHCF shall notify the resident in writing that the RHCF will be holding the security deposit, the amount of the security deposit and the initial interest rate to be paid on the deposit.
- The RHCF is entitled to receive as administration expenses, a sum equivalent to 1% per annum thereon or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, which is in lieu of all other administrative and custodial expenses associated with the resident's security deposit account.

The bill will take effect on the first day of the sixth month following its enactment. The effective date also provides that the bill applies to all security deposits held by a RHCF on behalf of its residents at the time the law becomes effective. This clarifies the fact that this bill would not merely apply to security deposits received from residents who enter the RHCF after the effective date of the law.

This bill is modeled on P.L.1991, c.262 (C.30:13-4.1 et seq.), which requires nursing homes to pay interest on security deposits. The bill is intended to provide the same protection to RHCF residents.